



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner
December 31, 2003

Cumberland Farms Inc.
ATTN: Richard Etzold
777 Dedham Street
Canton, MA 02021

**NOTICE OF NON-COMPLIANCE and
PERMIT REVOCATION – NCPR # 03-039**

RE: RAYMOND, CUMBERLAND FARMS 2827, EXISTING UNDERGROUND STORAGE TANK
FACILITY (UST #A-0113135) (DES #200005037)

Dear Mr. Etzold:

The New Hampshire Department of Environmental Services ("DES") is hereby notifying you that the above-referenced facility, located at 27 Epping Street, Raymond, NH is not in compliance with New Hampshire Code of Administrative Rules Env-Wm 1401, regulating Underground Storage Facilities. On September 23, 2003 a DES inspector conducted a compliance audit at the facility. A written document, describing the deficiencies was provided to the facility representative. This document required the facility be returned to compliance within 45 days, and DES be notified of the corrective measures taken. Compliance has not been achieved. **Failure to achieve compliance with the following deficiencies within 90 days from the date of this Notice of Non-Compliance and Permit Revocation ("Notice") will result in revocation of your Permit-to-Operate on March 30, 2004. This letter contains important compliance and procedural information. Please read it carefully.**

Env-Wm 1401.11 Inventory Monitoring

Env-Wm 1401.11 requires inventory monitoring be conducted and inventory records be maintained on motor fuel, hazardous substance and bulk heating oil systems without secondary containment and leak monitoring for both tank and piping. DES has determined that inventory monitoring was not being conducted correctly for the three 8,000-gallon gasoline USTs. Product level was not being measured and recorded before and after delivery, the total monthly loss or gain of product in gallons was not calculated, the total monthly maximum loss or gain of product allowable was not calculated, and the monthly inventory was not signed. Inventory monitoring shall be corrected and one month of inventory monitoring results for the three gasoline USTs shall be provided to DES.

2. Env-Wm 1401.25 Spill Containment and Overfill Protection

Env-Wm 1401.25 requires overfill protection devices be installed and maintained in good working order on all UST systems. DES has determined that the overfill protection device for the 8,000-gallon premium gasoline UST was not operating properly. The overfill protection device shall be repaired.

3. Env-Wm 1401.26 Leak Monitoring for New Tanks and Env-Wm 1401.31 Operation of Leak Monitoring Equipment

Env-Wm 1401.26 and/or Env-Wm 1401.31 require that a leak monitor for double-wall tank systems continuously operate. The leak monitoring equipment and devices shall be tested

annually for proper operation in accordance with manufacturer's requirements. DES has determined that the leak monitor for one of the 8,000-gallon regular gasoline and the 8,000-gallon premium gasoline tank systems was in alarm condition and the tanks systems were not temporarily closed. DES has also determined that the leak monitoring equipment and devices did not have its annual test for proper operation. Liquid needs to be removed from the interstitial spaces for both USTs and verification that the interstitial sensors are located at the bottom center of all three USTs shall be provided to DES. Leak monitor replacement or maintenance results or indication that the systems have been temporarily closed shall be provided to DES. The annual test documentation shall also be provided to DES.

4 Env-Wm 1401.30 Release Detection for Piping

Env-Wm 1401.30 requires all pressurized piping without secondary containment and leak monitoring to be monitored for releases using groundwater monitoring, soil vapor monitoring, or an annual line tightness test. Release detection results for the piping systems at all three 8,000-gallons gasoline USTs shall be provided to DES.

5 Env-Wm 1401.33 Corrosion Protection for Piping

Env-Wm 1401.33 requires corrosion protection be installed on regulated piping prior to December 22, 1998. DES has determined that the steel piping under both dispensers was not corrosion protected. Soil must be removed from around the steel piping under the dispensers or corrosion protection plans and specifications for the piping must be submitted to DES.

6. Env-A 1205.06 Stage I System Maintenance Requirements for Gasoline Dispensing Facilities

Env-A 1205.06(a) requires Stage I equipment to be maintained and properly operating as specified by the manufacturer and CARB. DES has determined that the gaskets on the drop tubes for all three 8,000-gallon gasoline USTs were missing. Gaskets must be installed on all three drop tubes and verification in writing that they have been installed shall be provided to DES.

In addition, Env-Wm 1401.10(a) requires owners of underground storage facilities for oil to maintain financial responsibility for costs associated with cleanup of releases from systems, the implementation of corrective measures, and compensation for third party damages in the amount equal to or greater than \$1,000,000 per occurrence. Env-Wm 1401.10(c) provides that the financial responsibility requirement may be satisfied if the owner is eligible for reimbursement of costs associated with cleanup of releases from the Oil Discharge and Disposal Cleanup Fund ("the Fund"). Eligibility for the Fund is contingent upon achieving and maintaining compliance with statutory (RSA 146-C) and regulatory (Env-Wm 1401) requirement. This facility has not achieved compliance, consequently, the Fund is not available to you as a financial responsibility mechanism.

In accordance with RSA 146-C:4 and Env-Wm 1401.07(a), no person shall own or operate an underground storage facility without a permit issued by DES. Within 30 days from the date of the permit revocation the facility shall be closed in accordance with Env-Wm 1401.18 for permanent closure.

Based on the compliance deficiencies described above, DES believes this facility poses a potential substantial threat to the surface and groundwater of the state. Therefore, in accordance with RSA 146-C:4 and Env-Wm 1401.09, if compliance as requested above is not achieved within ninety (90) days of the date of this Notice your Permit-to-Operate (UST Permit #0113135) shall be revoked effective

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March 30, 2004. Within thirty (30) days of the date of permit revocation all regulated substances must be removed from the UST systems at this facility. If the facility achieves compliance during the ninety (90) day period, it is necessary that documentation be submitted to DES verifying that compliance has been attained.

You have the right to a hearing to contest these allegations before the proposed license action is taken. The hearing would be a formal adjudicative proceeding pursuant to RSA 541-A:31, at which you and any witnesses you may call would have the opportunity to present testimony and evidence as to why the proposed action should not be taken. All testimony at the hearing would be under oath and would be subject to cross-examination. If you wish to have a hearing, one will be scheduled promptly.

RSA 541-A:31 III(e) provides that you have the right to have an attorney present to represent yourself at your own expense. If the Permit is an occupational license, under RSA 541-A:31, III(f) you have the right to request DES to provide a certified shorthand court reporter at your own expense. **Such request must be submitted in writing at least 10 days prior to the proceeding.**

You may waive your right to a hearing. If you waive the hearing, DES is prepared to proceed with the actions as stated above. You should notify DES of your decision by filling out and returning the enclosed form.

If there are any questions concerning the above, may be contacted at the Waste Management Division at (603) 271-1165.

Sincerely,

 **COPY**

Lynn A. Woodard, P.E.

Supervisor

Oil Compliance and Initial Response Section

CERTIFIED MAIL # 7000 1670 0000 0585 1934

cc: Michael P. Nolin, Commissioner
Mark Harbaugh, DES Legal Unit
Fred McGarry, P.E., Chief Engineer, WMD
George Lombardo, P.E., WMD
Tom Beaulieu, WMD
Health Officer, Town of Raymond